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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARLAN WESLEY HARRELL, et al.,

Defendants.

No. CR 17-404(B)-AB-1

GOVERNMENT'S MEMORANDUM IN AID OF  
DEFENDANT ARLAN WESLEY HARRELL'S  
CHANGE OF PLEA

Plaintiff United States of America, by and through its attorneys  
of record, the United States Attorney's Office for the Central  
District of California and Assistant United States Attorneys Devon

Myers and Karen I. Meyer and Department of Justice Trial Attorneys Lauren Kupersmith and Kyle P. Reynolds, hereby submits this memorandum in aid of defendant ARLAN WESLEY HARRELL's ("defendant") Rule 11 plea. At the change of plea hearing set for May 14, 2021, it is the government's understanding that defendant intends to plead guilty to all of the charges in which he is named in the Second Superseding Indictment, without a plea agreement. The government hereby files a brief statement regarding the elements, penalties, and facts supporting those counts in which defendant is named: Counts One through Five and Seven through Twenty-Four.

Dated: May 11, 2021

Respectfully submitted,

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/s/  
\_\_\_\_\_  
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**MEMORANDUM**

**I. INTRODUCTION**

Defendant Arlan Wesley Harrell ("defendant") has indicated that he intends to plead open to all counts of the Second Superseding Indictment ("SSI") in which he is named. The parties attempted to negotiate a factual basis on which they agreed. Defense counsel's preference is to only use those facts alleged in the SSI. The government is concerned, however, that a factual basis of only those facts in the SSI may be insufficient for it to be clear to the Court that defendant understands the nature of the charges.

For example, in United States v. Rivillas, the Court held that reading the indictment in a conspiracy case was not sufficient to indicate that the defendant understood the charges against him. 243 F.3d 551, \*1-2 (9th Cir. 2000) (unpub.) ("Reading the indictment aloud was also inadequate under Rule 11. Although simply reading the indictment may suffice in some cases to inform a defendant of the nature of the charges against him, Rule 11 is not satisfied unless there is evidence on the record that the defendant understands the nature of the charges. . . . Conspiracy is a complex charge, esoteric to an accused, and we have consistently reversed guilty pleas when, as here, the district court failed to explain the nature of a conspiracy charge to the defendant." (internal citations and quotations omitted)); see also United States v. Kramer, 781 F.2d 1380, 1384 (9th Cir. 1986) ("in non-complex cases, a reading of the indictment may suffice").

Given that this case involves a significant sentencing exposure for defendant, that some of the charges are complex or involve

1 statutory language whose meaning is not always clear on its face, the  
2 government proposes the factual basis below. The government's  
3 proposed factual basis hews closely to the language of the SSI but  
4 also uses more plain language in place of legal terms of art and  
5 includes some additional details that the government believes will  
6 help the Court be assured that defendant understands the nature of  
7 the charges against him.

8 **II. GUILTY PLEA**

9 Defendant is pleading guilty to all counts in the twenty-four  
10 count SSI in which he is charged in United States v. Arlan Wesley  
11 Harrell, et al., 17-cr-404(B)-AB, which are counts One through Five  
12 and Seven through Twenty-Four.

13 Count One charges defendant with Child Exploitation Enterprise,  
14 in violation of Title 18, United States Code, Section 2252A(g). Count  
15 Two charges defendant with Obtaining Custody of A Child To Produce  
16 Child Pornography, in violation of Title 18, United States Code  
17 Section 2251A(b). Counts Three through Five charge defendant with  
18 Production of Child Pornography, in violation of Title 18, United  
19 States Code, Sections 2251(a), (e), as well as the alternate theory  
20 of aiding and abetting the Production of Child Pornography in  
21 violation of Title 18, United States Code, Section 2(a). Counts  
22 Seven through Twenty-Three charge defendant with Production of Child  
23 Pornography, in violation of Title 18, United States Code, Sections  
24 2251(a), (e). Count Twenty-Four charges defendant with Possession of  
25 Child Pornography in violation of title 18, United States Code,  
26 Section 2252(a)(4)(B), (b)(2).

**III. NATURE OF THE OFFENSE**

1. For defendant to be guilty of the crime charged in Count One, that is, Child Exploitation Enterprise, in violation of Title 18, United States Code, Section 2252A(g), the following must be true: (1) defendant knowingly produced, advertised, transported, distributed, or received child pornography in violation of Chapter 110 of Title 18, United States Code, as part of a series of felony violations constituting three or more separate incidents; (2) the incidents involved more than one victim; and (3) the defendant committed those offenses in concert with three or more other persons.

2. For defendant to be guilty of the crime charged in Count Two, that is, Obtaining Custody of A Child To Produce Child Pornography, in violation of Title 18, United States Code Section 2251A(b), the following must be true: (1) defendant purchased or otherwise obtained custody or control of a minor, or otherwise offered to purchase or otherwise obtain custody or control of a minor; (2) defendant (a) knew that as a consequence of the purchase or obtaining of custody, the minor would be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or (b) defendant intended to promote either the engaging in of sexually explicit conduct by such minor for the purpose of producing any such visual depiction or the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct; and (3) (a) the minor or defendant traveled or was transported in or affecting interstate or foreign commerce; (b) the offer was communicated or transported using any means or facility of

1 interstate or foreign commerce or in or affecting interstate or  
2 foreign commerce by any means including by computer, or using the  
3 mail; or (c) the conduct took place in any territory or possession of  
4 the United States.

5 3. For defendant to be guilty of the crime charged in Counts  
6 Three, Four, Five, and Seven through Twenty-Three, that is,  
7 Production of Child Pornography, in violation of Title 18, United  
8 States Code, Sections 2251(a), (e), the following must be true: (1)  
9 at the time of the offense, the victim was under the age of 18 years;  
10 (2) defendant employed, used, persuaded, induced, enticed, or coerced  
11 the victim to take part in sexually explicit conduct for the purpose  
12 of producing a visual depiction of such conduct; and (3) (a) the  
13 visual depiction was actually transported and transmitted using any  
14 means or facility of interstate and foreign commerce and in and  
15 affecting interstate commerce; or (b) the defendant knew or had  
16 reason to know that the visual depiction would be transported or  
17 transmitted using any means or facility of interstate or foreign  
18 commerce or in or affecting interstate commerce; or (c) the visual  
19 depiction was produced or transmitted using materials that have been  
20 mailed, shipped, or transported in or affecting interstate or foreign  
21 commerce by any means, including by computer.

22 4. For defendant to be guilty of Aiding and Abetting the  
23 Production of Child Pornography, as charged as an alternative theory  
24 in Counts Three, Four and Five, in violation of Title 18, United  
25 States Code, Section 2251(a), the following must be true: (1) someone  
26 else committed the production of child pornography; (2) defendant  
27 aided, counseled, commanded, induced or procured that person with  
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1 respect to at least one element of the production of child  
2 pornography; (3) defendant acted with the intent to facilitate the  
3 production of child pornography; and (4) defendant acted before the  
4 crime was completed.

5       5. For defendant to be guilty of the crime charged in Count  
6 Twenty-Four, that is, possession of child pornography, in violation  
7 of title 18, United States Code, Section 2252(a)(4)(B), (b)(2), the  
8 following must be true: (1) defendant knowingly possessed one or more  
9 matter that defendant knew contained visual depictions of minors  
10 engaged in sexually explicit conduct; (2) defendant knew that the  
11 visual depictions showed minors engaged in sexually explicit conduct;  
12 (3) defendant knew that the production of such visual depictions  
13 involved use of a minor in sexually explicit conduct; and (4) the  
14 visual depiction had been either: (a) transported using any means or  
15 facility of interstate commerce or in or affecting interstate  
16 commerce or (b) produced using materials that had been transported  
17 using any means or facility of interstate commerce or in or affecting  
18 in interstate or foreign commerce by computer or other means.

19 **IV. PENALTIES**

20       6. The statutory maximum sentence that the Court can impose  
21 for a violation of Title 18, United States Code, Section 2252A(g),  
22 is: life imprisonment; a lifetime period of supervised release; full  
23 restitution to the victims of the offense; a fine of \$250,000 or  
24 twice the gross gain or gross loss resulting from the offense,  
25 whichever is greatest; and a mandatory special assessment of \$100 and  
26 a \$5,000 special assessment pursuant to title 18, United States Code,  
27 Section 3014 if the Court determines defendant is non-indigent.

1           7.     The statutory maximum sentence that the Court can impose  
2 for a violation of Title 18, United States Code, Section 2251A(b),  
3 is: life imprisonment, a lifetime period of supervised release; full  
4 restitution to the victims of the offense; a fine of \$250,000 or  
5 twice the gross gain or gross loss resulting from the offense,  
6 whichever is greatest; and a mandatory special assessment of \$100 and  
7 a \$5,000 special assessment pursuant to title 18, United States Code,  
8 Section 3014 if the Court determines defendant is non-indigent.

9           8.     The statutory maximum sentence that the Court can impose  
10 for each violation of Title 18, United States Code, Sections 2251(a),  
11 (e), is: 30 years' imprisonment; a lifetime period of supervised  
12 release; full restitution to the victims of the offense; a fine of  
13 \$250,000 or twice the gross gain or gross loss resulting from the  
14 offense, whichever is greatest; and a mandatory special assessment of  
15 \$100 and a \$5,000 special assessment pursuant to title 18, United  
16 States Code, Section 3014 if the Court determines defendant is non-  
17 indigent.

18           9.     The statutory maximum sentence that the Court can impose  
19 for a violation of Title 18, United States Code, Sections  
20 2252(a)(4)(B), (b)(2), is: twenty years' imprisonment; a lifetime  
21 period of supervised release; full restitution to the victims of the  
22 offense; a fine of \$250,000 or twice the gross gain or gross loss  
23 resulting from the offense, whichever is greatest; and a mandatory  
24 special assessment of \$100 and a \$5,000 special assessment pursuant  
25 to title 18, United States Code, Section 3014 if the Court determines  
26 defendant is non-indigent.



1           10. The total maximum sentence for all offenses to which  
2 defendant is pleading guilty is: life imprisonment; a lifetime period  
3 of supervised release; a fine of \$5,750,000 or twice the gross gain  
4 or gross loss resulting from the offenses, whichever is greatest; a  
5 mandatory special assessment of \$2,300 and a trafficking special  
6 assessment of \$115,000, if the Court determines that defendant is not  
7 indigent.

8           11. The statutory minimum sentence that the Court must impose  
9 for a violation of Title 18, United States Code, Section 2252A(g),  
10 is: 20 years' imprisonment; five years' supervised release; and a  
11 mandatory special assessment of \$100.

12           12. The statutory minimum sentence that the Court must impose  
13 for a violation of Title 18, United States Code, Section 2251A(b),  
14 is: 30 years' imprisonment; five years' supervised release; and a  
15 mandatory special assessment of \$100.

16           13. The statutory minimum sentence that the Court must impose  
17 for a violation of Title 18, United States Code, Section 2251(a), is:  
18 15 years' imprisonment; five years' supervised release; and a  
19 mandatory special assessment of \$100.

20           14. The statutory minimum sentence that the Court must impose  
21 for a violation of Title 18, United States Code, Section  
22 2252(a)(4)(B), is: five years' supervised release; and a mandatory  
23 special assessment of \$100.

24           15. Supervised release is a period of time following  
25 imprisonment during which defendant will be subject to various  
26 restrictions and requirements. Defendant understands that if  
27 defendant violates one or more of the conditions of any supervised  
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1 release imposed, defendant may be returned to prison for all or part  
2 of the term of supervised release authorized by statute for the  
3 offense that resulted in the term of supervised release.

4 16. By pleading guilty, defendant may be giving up valuable  
5 government benefits and valuable civic rights, such as the right to  
6 vote, the right to possess a firearm, the right to hold office, and  
7 the right to serve on a jury. Once the Court accepts defendant's  
8 guilty pleas, it will be a federal felony for defendant to possess a  
9 firearm or ammunition. The convictions in this case may also subject  
10 defendant to various other collateral consequences, including but not  
11 limited to revocation of probation, parole, or supervised release in  
12 another case and suspension or revocation of a professional license.  
13 Defendant understands that unanticipated collateral consequences will  
14 not serve as grounds to withdraw defendant's guilty pleas.

15 17. If defendant is not a United States citizen, the  
16 convictions in this case makes it practically inevitable and a  
17 virtual certainty that defendant will be removed or deported from the  
18 United States. Defendant may also be denied United States  
19 citizenship and admission to the United States in the future.  
20 Defendant understands that while there may be arguments that  
21 defendant can raise in immigration proceedings to avoid or delay  
22 removal, removal is presumptively mandatory and a virtual certainty  
23 in this case. Removal and immigration consequences are the subject  
24 of a separate proceeding and that no one, including his attorney or  
25 the Court, can predict to an absolute certainty the effect of his  
26 convictions on his immigration status. Defendant nevertheless  
27 affirms that he wants to plead guilty regardless of any immigration  
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1 consequences that his pleas may entail, even if the consequence is  
2 automatic removal from the United States.

3 18. As a condition of supervised release, under Title 18,  
4 United States Code, Section 3583(d), defendant will be required to  
5 register as a sex offender. Independent of supervised release,  
6 defendant will be subject to federal and state registration  
7 requirements, for a possible maximum term of registration up to and  
8 including life. Under Title 18, United States Code, Section 4042(c),  
9 notice will be provided to certain law enforcement agencies upon his  
10 release from confinement following conviction. The defendant must  
11 register and keep the registration current in each jurisdiction in  
12 which the defendant resides, is an employee, or is a student.  
13 Requirements for registration include providing, among other  
14 information, the defendant's true name, residence address, and names  
15 and addresses of any places where the defendant is or will be an  
16 employee or student. The requirement to keep the registration  
17 current includes informing at least one jurisdiction in which the  
18 defendant resides, is an employee, or is a student not later than  
19 three business days after any change of the defendant's name,  
20 residence, employment, or student status. Failure to comply with  
21 these obligations subjects the defendant to prosecution for failure  
22 to register under federal law, 18 U.S.C. § 2250, which is punishable  
23 by a fine or imprisonment, or both.

24 **V. FACTUAL BASIS**

25 19. The United States submits that this statement of facts is  
26 sufficient to support pleas of guilty to the charges described in  
27 this document, but it is not meant to be a complete recitation of all  
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1 facts relevant to the underlying criminal conduct or all facts known  
2 to either party that relate to that conduct.

3 As to Count 1, HARRELL (a/k/a "soole," "fritters," "kronos," and  
4 "the dread king") was a member of "Website A," which was an Internet-  
5 based, members-only bulletin board dedicated to the production,  
6 advertisement, transportation, receipt, distribution, and possession  
7 of child pornography depicting children five years old or younger.  
8 HARRELL was a member of Website A and that he made posts under the  
9 username "Soole." When HARRELL was a member, Website A had over one  
10 thousand members. Its members used screen names to mask their  
11 identities, followed security rules regarding remaining anonymous,  
12 and needed to use a network that masked each member's Internet  
13 Protocol address.

14 Members could make "posts" to Website A that often included  
15 child pornography images and videos and links to child pornography.  
16 Members could make these posts in different sections of Website A  
17 that were dedicated to child pornography depicting children of  
18 certain ages and genders. Website A also allowed members to ascend  
19 to certain "ranks" based on the extent of that member's participation  
20 in Website A, including the amount of child pornography the member  
21 shared over the website.

22 HARRELL joined Website A on approximately February 12, 2016 and  
23 made approximately 155 posts to other Website A users. For example,  
24 acting in concert with co-defendant, John Richard Brinson, and other  
25 members of Website A, HARRELL made the following posts on Website A:

- 26 • On November 3, 2016, HARRELL made a post that contained a  
27 preview image portraying smaller images, including images  
28

1 that depicted a closeup of Minor Victim 14's unclothed legs  
2 spread to show her genitals in the middle of the image.

3 The post also included a link for the preview image and a  
4 link to download full-size versions of the smaller images,  
5 along with text about the images. Minor Victim 14 was  
6 approximately five years old at the time of the post.

- 7 • On January 12, 2017, HARRELL made a post that contained a  
8 preview image portraying smaller images, including images  
9 that depicted a closeup of Minor Victim 5's unclothed  
10 genitals being spread by HARRELL's fingers. The post also  
11 included a link for the preview image and a link to  
12 download full-size versions of the smaller images, along  
13 with text about the images and a statement that there would  
14 be more. Minor Victim 5 was less than two years old at the  
15 time of the post.

- 16 • On April 15, 2017, HARRELL made a post that included links  
17 to two image previews of video files and links to the two  
18 video files, as well as text describing the videos. One of  
19 the videos depicted Minor Victim 6 being anally penetrated  
20 by HARRELL's penis. Minor Victim 6 was less than three  
21 years old at the time of the post.

22 As to Count 2, on or about September 24, 2016, HARRELL took  
23 custody and control of Minor Victim 11, who was then approximately  
24 three years old, and transported him to Brinson's residence for the  
25 purpose of producing child pornography. While in HARRELL's custody,  
26 HARRELL and Brinson created images of Minor Victim 11, which depicted  
27 the lascivious exhibition of Minor Victim 11's genitals and images  
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1 that depicted adult fingers touching Minor Victim 11's penis and  
2 anus. HARRELL's offer to obtain custody of Minor Victim 11 was  
3 communicated using a cellular telephone network, i.e., a means or  
4 facility of interstate commerce.

5 As to Count 3 through 5, between approximately September 24,  
6 2016 and May 28, 2017, HARRELL and Brinson, each assisting the other,  
7 created images and/or videos of Minor Victims 3, 11, and 12, which  
8 depicted the lascivious display of the genitals of Minor Victims 3,  
9 11, and 12, as well as HARRELL and/or Brinson orally copulating, or  
10 masturbating or anally penetrating Minor Victims 3, 11, and 12. Each  
11 image or video was produced or transmitted using materials that were  
12 manufactured outside of California. At all relevant times, Minor  
13 Victim 3 was less than 8 years old and Minor Victim 12 was less than  
14 4 years old.

15 As to Counts 7 through 20, between approximately 2013 and May  
16 28, 2017, HARRELL created images and/or videos of Minor Victims 5, 6,  
17 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, and 20, each of which  
18 depicted the lascivious display of the genitals of those minors or  
19 depicted HARRELL orally copulating or masturbating the minors or  
20 penetrating them with his penis. Each image or video was produced or  
21 transmitted using materials that were manufactured outside of  
22 California. At all relevant times, Minor Victims 5, 6, 7, 8, 9, 10,  
23 13, 14, 15, 16, 17, 18, 19, and 20 were less than 10 years old.

24 As to Counts 21 through 23, on approximately May 19, 2017,  
25 HARRELL created images and/or videos of Minor Victims 21, 22, and 23,  
26 which depicted the lascivious display of the genitals of each of  
27 those minors. Each image or video was produced or transmitted using  
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1 materials that were manufactured outside of California. At all  
2 relevant times, Minor Victims 21, 22, and 23 were less than 7 years  
3 old.

4 As to Count 24, on approximately May 28, 2017, HARRELL possessed  
5 at least one electronic device that contained images and videos of  
6 minors, including minors who were under 12 years old who are not  
7 Minor Victims 3 or 5-23, that depict among other things, the  
8 lascivious display of the minors' genitals. These images were  
9 produced using materials that had been transported across a state  
10 line into California and/or had been transmitted via the internet,  
11 i.e., a means or facility of interstate commerce.

12 All of HARRELL's offenses described above took place in the  
13 state of California and in whole or in part within the Central  
14 District of California. He took these actions knowingly and  
15 deliberately and not by mistake or accident. All of the individuals  
16 designated as "Minor Victims" were under the age of 18 at the time of  
17 his conduct. This Factual Basis does not recite every fact known to  
18 the United States about HARRELL's conduct, and it does not prevent  
19 either party from introducing additional facts or evidence at  
20 sentencing.

21 **VI. WAIVER OF CONSTITUTIONAL RIGHTS**

22 20. By pleading guilty, defendant gives up the following  
23 rights:

- 24 a. The right to persist in a plea of not guilty.
- 25 b. The right to a speedy and public trial by jury.
- 26 c. The right to be represented by counsel - and if  
27 necessary have the Court appoint counsel - at trial. Defendant  
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1 understands, however, that, defendant retains the right to be  
2 represented by counsel - and if necessary have the Court appoint  
3 counsel - at every other stage of the proceeding.

4 d. The right to be presumed innocent and to have the  
5 burden of proof placed on the government to prove defendant guilty  
6 beyond a reasonable doubt.

7 e. The right to confront and cross-examine witnesses  
8 against defendant.

9 f. The right to testify and to present evidence in  
10 opposition to the charges, including the right to compel the  
11 attendance of witnesses to testify.

12 g. The right not to be compelled to testify, and, if  
13 defendant chose not to testify or present evidence, to have that  
14 choice not be used against defendant.

15 h. Any and all rights to pursue any affirmative defenses,  
16 Fourth Amendment or Fifth Amendment claims, and other pretrial  
17 motions that have been filed or could be filed.